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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1937.

Nos. 715 and 716

IN THE MATTER OF JAMES M. WRIGHT,
Debtor.

JAMES M. WRIGHT,
Petitioner and Appellant Below,

vs.

UNION CENTRAL LIFE INSURANCE COMPANY
Respondent and Appellee Below.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

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OPINION BELOW.

The petitioner's conclusion, as to what the U. S. Circuit Court of Appeals for the Seventh Circuit held, is inaccurate. We herewith set forth the opinion of the Circuit Court of Appeals in full. Same is reported in 91 Fed. (2d) 894.

SPARKS, Circuit Judge.

These appeals involve bankruptcy proceedings under section 75 of the Bankruptcy Act (as amended, 11 U. S. C. A. § 203) in which appellant was the debtor. The first appeal is from an order of the District Court, on December 14, 1936, overruling the debtor's petition to reveiw the decision and recommendations of the Conciliation Commissioner and approving the latter's recommendation that certain real estate listed as assets be stricken from the debtor's schedules. The second appeal is from an order of the court, on December 31, 1936, denying the debtor's application for permission to amend his schedules by reinstating as assets therein, the real estate theretofore stricken in Cause No. 6183.

The questions presented in both cases are practically the same and they arise out of the following facts: On October 1, 1925, the debtor was the owner of 200 acres of land in Jay County, Indiana. On that date he with his wife, Emma G., executed a mortgage upon this land to appellee to secure the payment of a note in the sum of $9,000. On the same day the debtor was the owner of an additional tract of land in the same county containing 80.31 acres, upon which appellee held a mortgage lien to secure the payment of a note for $3,000 executed by the debtor and his wife on October 1, 1925. These two tracts adjoined, constituting one farm.

On October 14, 1931, the debtor and his wife executed and delivered three separate warranty deeds to their two children and son-in-law for certain portions of the farm; that is to say,—to their son, Walter C. Wright, they deeded the 80.31 acre tract; to their daughter, Edna E. Coon, and her husband John E. Coon, they deeded separate 40-acre tracts, one to each, out of the 200-acre tract. On

the same day the debtor also executed and delivered to his wife a separate warranty deed for a third 40-acre tract out of the 200 acres. The consideration named in each deed was $1 and other consideration, the receipt of which was acknowledged. The deed to Walter C. Wright was made subject to appellee's mortgage thereon for $3,000; and the deeds to Edna E. Coon, her husband and her mother, were made subject respectively to a mortgage indebtedness of $2,500, $1,500, and $1,400 of the $9,000 mortgage indebtedness to appellee; however, there was no express assumption of such indebtedness by any of the grantees. The deeds of the children and son-in-law were duly recorded on the day they were executed, and the one to the debtor's wife was duly recorded on February 25, 1932.

On January 3, 1934, appellee instituted an action in the Jay Circuit Court of Indiana, against the debtor and Walter C. Wright to foreclose the $3,000 mortgage on the 80.31-acre tract. The debtor's wife was not joined in the action because in the meantime she had died. On June 9, 1934, a decree of foreclosure and order of sale was entered. On July 12, 1934, pursuant to the decree, the sheriff sold this tract to appellee and issued to it his certificate of sale therefor; and upon the expiration of the year of redemption, pursuant to the Indiana Statutes, the sheriff of Jay County issued his sheriff's deed therefor to appellee on August 2, 1935.

Prior to October 30, 1934, appellee filed its complaint in the Jay Circuit Court of Indiana, for personal judgment against James M. Wright, and for foreclosure of the $9,000 mortgage, against James M. Wright, Emma G. Wright, Edna E. Coon, John E. Coon, Walter C. Wright, and the Citizens Bank of Portland, Indiana. That cause was venued from Jay County to Adams County, Indiana, and

while it was pending on October 30, 1934, the debtor filed his petition in bankruptcy, under the Frazier-Lemke Act (section 75 (s), as added by Act June 28, 1934, 48 Stat. 1289, 11 U. S. C. A. § 203 note), in which he filed under oath a schedule of his property including therein the real estate which he had conveyed on October 14, 1931, to his wife and children and his son-in-law, amounting to 200.31 acres.

On April 13, 1935, Walter C. Wright, Virgie M. Wright, his wife, John E. Coon and Edna E. Coon, his wife, executed and delivered to the debtor a quit-claim deed for the real estate which he had deeded to them, and to his wife who was then deceased.

On May 27, 1935, appellee recovered a personal judgment against the debtor in the Adams Circuit Court for $11,975.11 and a decree of foreclosure of its $9,000 mortgage which covered the 200-acre tract, 120 acres of which had been conveyed by three of the four deeds hereinbefore referred to. Pursuant to that decree, on July 20, 1935, the Sheriff of Jay County, in compliance with the applicable laws of Indiana, sold the fee simple of that real estate to appellee for $12,174.31, that being the highest and best bid received, and executed and delivered to it a certificate of sale. No one having redeemed the property within the year of redemption, the Sheriff of Jay County, upon presentation of the certificate by appellee on July 20, 1936, executed and delivered his sheriff's deed to appellee for the 200 acres described in the certificate.

On September 13, 1935, appellee instituted an action in the Jay Circuit Court, against Walter C. Wright and his wife Virgie M. Wright, for possession of the 80.31 acres. The debtor by leave of court was admitted as a party defendant, and answered that he had been duly declared a

bankrupt in the Federal Court and that the State Court, for that reason, was without jurisdiction. Judgment for possession and damages went for appellee, whereupon appellants appealed to the Supreme Court of Indiana, and the judgment was affirmed April 2, 1937. See *Wright et al.* v. *Union Central Life Insurance Co.*, 7 N. E. (2d) 206. On October 11, 1935, the debtor filed an amended petition in bankruptcy under the provisions of section 75 (s), as amended August 28, 1935 (11 U. S. C. A. § 203 (s)).

Both records in the appeals to this court were filed February 20, 1937. The cases were consolidated for hearing, and on June 3, 1937, appellee filed its motion and petition to dismiss the consolidated appeals. On June 11, 1937, appellant filed his verified petition for a temporary order without notice, restraining appellee, until notice could be given, and for a permanent order upon hearing, from enforcing the judgment which the Indiana Supreme Court had affirmed, for possession of the 80.31-acre tract. This court issued the order and continued it until June 25, and notified both parties that both appeals would be heard on their merits at that time, and that also all pending petitions and motions would be then heard.

On June 14, 1937, appellant filed his second paragraph of petition for a restraining order, and the merits and motions were submitted and presented on the appointed day.

All questions here presented by appellant are based upon subsection (s) of section 75, as amended by the new Frazier-Lemke Act, August 28, 1935, 11 U. S. C. A. § 203 (s).

Aside from this enactment it is obvious that the debtor had no interest in 200.31 of the 280.31 acres of the mortgaged property at the time he filed his original bank-

ruptcy petition on October 30, 1934, for he had deeded it to his wife, children and son-in-law more than three years before, and he did not again receive a deed for it until six months thereafter, which was nine months after the sheriff had sold the 80.31-acre tract, and within a very short time prior to the sale of the 200-acre tract under the foreclosure decree. At the time the debtor filed his amended petition for relief under the amended Act of August 28, 1935, appellee had received a deed from the sheriff for the 80.31-acre tract on August 2, 1935, and he held a sheriff's certificate of sale for the 200-acre tract, and under the Indiana law would have been entitled to a deed therefor on July 20, 1936, if there were no redemption. Hence, at the time of the enactment on August 28, 1935, the only interest that debtor had in the mortgaged property was a right to redeem the 200-acre tract, provided he did so on or before July 20, 1936. Indeed, that was all the interest he had when he filed his amended petition on October 11, 1935, unless the amendment of August 28, 1935, operated to extend his right of redemption.

It is contended by appellant that the amendment did so operate, not only to extend the time for redemption of the 200-acre tract, but also to void the deed for the 80.31-acre tract, and to extend the time for redemption of it. [1] In *Lafayette Life Insurance Company* v. *Lowmon*, 79 F. (2d) 887, we held that Congress had no power to extend the time for the redemption of land sold under execution, after that time had begun to run, that is to say after the sheriff's sale. That case did not involve the right of Congress, under its bankruptcy powers, to defer the foreclosure of a mortgage, or even a sale after a foreclosure, and those questions were not decided in that case. There the sale had been had and we thought, under

the laws of Indiana, which are rules of property in that State, that at the time Lowmon filed her petition in bankruptcy under section 75, the only interest she had in the property was her right to redeem. We did not question the right of the Bankruptcy Court to administer upon that right of redemption, but we thought that the Bankruptcy Court had no right, and that Congress had no power to bestow upon it such right, to enlarge the debtor's estate, which had been limited by the foreclosure and sale in compliance with the laws of Indiana. Certiorari was not sought in that case.

Confusion has arisen in this Circuit, however, with respect to the extent of the decision of the Supreme Court in *Wright* v. *Vinton Branch of Mountain Trust Bank of Roanoke,* 300 U. S. 440, 57 S. Ct. 556, 558, 81 L. Ed. ——. It is contended by appellant that that case, in effect, overruled the *Lowmon Case* and sustained subsection (s) of section 75 as to all of its provisions. We disclaim any intention of not strictly following the rulings of the Supreme Court, but we can not accept appellant's interpretation of the extent of that decision. We do not understand that the question in the *Lowmon Case* was before the Supreme Court in the *Wright Case.* In the latter case there had been no sale and the period of redemption had not begun. In the *Lowmon Case* there had been a sale and the period of redemption was running, in fact it expired two weeks after the petition was filed. Appellant's contention is based first upon the first paragraph of the Wright decision in which the *Lowmon Case* is referred to. After stating that the question for decision was whether section 75, subsection (s) as amended, was constitutional, the Court said: "In this case, the federal court for western Virginia (see *In re* Sherman [D. C.] 12 F. Supp. 297) and the Circuit Court of Ap-

peals for the Fourth Circuit (85 F. (2d) 973) held it invalid. Like decisions have been rendered in other circuits. *Lafayette Life Insurance Co.* v. *Lowmon,* 79 F. (2d) 887 (Seventh Circuit); *United States National Bank of Omaha* v. *Pamp,* 83 F. (2d) 493 (Eighth Circuit). In the Fifth Circuit the legislation was sustained. *Dallas Joint Stock Land Bank* v. *Davis* (C. C. A.) 83 F. (2d) 322. Because of this conflict and the importance of the question, we granted certiorari." 299 U. S. 537, 57 S. Ct. 312, 81 L. Ed. ——. In no other part of the opinion are these cases referred to.

We interpret this paragraph as being merely a basis for granting certiorari. It is true that we suffer considerable embarrassment from the fact that in the *Wright Case* the court refers to the *Lowmon Case* as being a decision like unto those of the Circuit Courts of Appeals in the Fourth and Eighth Circuits, and the District Court of the Fourth Circuit, and contrary to the one in the Fifth Circuit. We had thought that the question decided in the *Lowmon Case* was not the same as that decided in the other cases referred to. In the *Lowmon Case* the sale had been made and the period of redemption was running. In all other cases cited, and in the *Wright Case,* the sales had not been made and they were still dealing with remedies for the protection of the title to property against foreclosure or sale, while that title was yet in the debtor. There was a sale in the *Pamp Case,* but it had not been confirmed, and from the opinion we assume that was required under the laws of Nebraska. Under the Indiana laws, however, no confirmation by the court of a sheriff's sale or deed for land sold under execution is required. In the *Lowmon Case* and in this case the court was not dealing with remedies against foreclosure and sale, but with property rights which came into existence when the

sales were made by virtue of the laws of Indiana. The notes and mortgages were not in existence; they were merged into the decree of foreclosure and were cancelled.

In the *Lowmon Case* we particularly discussed subsection (n) of section 75, and held it unconstitutional to the extent that it authorized an extension of the period of redemption. We also referred to the first sentence in subsection (s) (2) of section 75 (11 U. S. C. A. § 203 (s) (2)) which in effect commands the court to carry out that authorization by extending the time of redemption for a period of three years, and we held that portion of it unconstitutional. In this sense our decision was like those referred to in the Fourth and Eighth Circuits, and unlike the one in the Fifth Circuit, for we held a portion of subsection (s) unconstitutional. The Supreme Court in the *Wright Case* did not say, unless by remote inference, that the facts in all the cases referred to were analogous, or that the questions presented were the same. Indeed they were not the same.

We base these conclusions upon the ruling in *Board of Trade of City of Chicago* v. *Johnson,* 264 U. S. 1, 44 S. Ct. 232, 234, 68 L. Ed. 533, where the court said: " * * * where the bankrupt law deals with property rights which are regulated by the state law, the federal courts in bankruptcy will follow the state courts" and also upon *Home Bldg. & Loan Ass'n* v. *Blaisdell,* 290 U. C. 398, 54 S. Ct. 231, 243, 78 L. Ed. 413, 88 A. L. R. 1481, where it was said: "Although the courts would have no authority to alter a statutory period of redemption, the [Minnesota] legislation in question permits the courts to extend that period, within limits and upon equitable terms." True, these decisions were prior to the enactment of amended subsections (n) and (s) of section 75 (11 U. S. C. A. § 203 (n, s)), but we think that makes no

difference. If the extension of the time of redemption must be considered as a remedial right instead of a fixed property right, then the bankruptcy court under its broad equitable powers would perhaps have the inherent power to extend the time without permissive Federal legislation. In the *Blaisdell Case* it was said that the courts had no authority to alter a statutory period of redemption, and the court based its decision on the permissive amendment of the Minnesota legislation. Hence we concluded that the right to extend the time of redemption was not considered of a remedial character, but was regarded as a property right to be governed by the state law under the ruling of the *Chicago Board of Trade Case, supra.*

These late expressions of the Supreme Court lead us to believe that it did not intend to declare a different doctrine in the *Wright Case,* especially since that question was not then before it. The question presented is of such importance that we feel it our duty to adhere to the ruling in the *Lowmon Case* unless and until the Supreme Court shall hereafter hold to the contrary upon that issue [2] It seems to us that if Congress has the power under the constitution to prolong or in any way limit the time of redemption as fixed by the laws of Indiana, for the purpose of increasing the estate of the debtor, or increasing his rights in property to which he has no title, or for any other purpose, then it would have the same right for the same purpose to alter the laws of descent of that state, or to permit federal construction of her transfer statutes contrary to the views of her own courts. We have never thought that such power was contemplated by the federal constitution, even under its broadest construction.

Appellant urges that the effect of the decision in the *Wright Case* upholds each and every provision of sub-

section (s). We think it upholds only those portions which were pertinent to the questions raised in that case, which did not include the right of the bankruptcy court to extend the time for redemption after that period had begun to run.

From what has been said we overrule appellee's petition to dismiss the consolidated appeals, and the restraining order is dissolved. There was no error in striking from appellant's schedule of assets the real estate here involved in cause No. 6183, nor was there error in denying appellant's motion to reinstate that real estate in his schedule of assets in cause No. 6184.

Decrees affirmed.

JURISDICTION.

Jurisdiction of this Court to issue certiorari is conceded by respondent.

QUESTIONS PRESENTED.

(1) Did subsection (s) of section 75 of the Bankruptcy Act, as amended by the Act of Congress, August 28, 1935 (Chap. 792, Sec. 6, 49 Stat. U. S. 942) operate to extend the time for redemption of the 200-acre tract, on which foreclosure had been completed, purchase of same had by appellee (respondent) and on which appellee had received sheriff's certificate of sale nine months prior thereto?

(2) Did the same Act of the Congress of U. S. operate to void the final sheriff's deed, after expiration of period of redemption, for the 80.31-acre tract, and to extend the time for redemption of it?

STATEMENT.

Involved in these proceedings are two adjoining tracts of land one of 200 acres and the other 80.31 acres, both in Jay County, Indiana. On October 1, 1925, the debtor (petitioner) was the owner of the 200-acre tract. On that date he with his wife, Emma G., executed a mortgage upon this land to respondent to secure the payment of a note in the sum of $9,000.

On the same day the debtor was the owner of an additional adjoining tract of land containing 80.31 acres, upon which the debtor and his wife had, on the same day, executed a mortgage of $3,000. This mortgage was likewise held by this respondent.

On October 14, 1931, the debtor (petitioner) and his wife, executed and delivered three separate warranty deeds to their two children and son-in-law for certain portions of the combined farm; in the following manner, to-wit: they conveyed to their son, Walter C. Wright, the 80.31-acre tract; to their daughter, Edna E. Coon and her husband John E. Coon, they conveyed separate 40-acre tracts, one to each, out of the 200-acre tract. On the same date the debtor (petitioner) executed and delivered to his wife a separate warranty deed for a third 40-acre tract, out of the 200-acre tract. Consideration and receipt thereof was set forth in each deed. The warranty deed to Walter C. Wright was made subject to respondent's mortgage thereon for $3,000; and the deeds to Edna E. Coon, her husband and her mother, were made subject respectively to a mortgage indebtedness of $2,500, $1,500 and $1,400 of the $9,000 mortgage indebtedness to respondent. All of the above deeds were duly recorded on the date of their execution, except the one to the

debtor's wife, which deed was recorded on February 25, 1932.

The respondent, the holder and owner of the mortgage on the 80.31-acre tract, instituted foreclosure proceedings on January 3, 1934, against the debtor (petitioner) and Walter C. Wright. The debtor's wife was not joined in the action because in the meantime she had died. On June 9, 1934, a decree of foreclosure and order of sale was entered. On July 12, 1934, pursuant to the decree, the Sheriff sold this tract to the mortgagee (respondent) and issued to it his certificate of sale therefor; and upon the expiration of the year of redemption, prescribed by the statutes of the State of Indiana, the sheriff of Jay County issued his sheriff's deed therefor to the mortgagee (respondent) on August 2, 1935.

Prior to October 30, 1934, the respondent instituted foreclosure proceedings against James M. Wright, Emma G. Wright, Edna E. Coon, John E. Coon, Walter C. Wright and the Citizens Bank of Portland, Indiana, of the $9,000 mortgage affecting the other adjoining tract. While this cause was pending on that date, the debtor (petitioner) filed his petition in the bankruptcy under the Frazier-Lemke Act (Section 75 (s), as added by Act June 28, 1934, 48 Stat. 1289, 11 U. S. C. A., Sec. 203, note), in which he filed under oath a schedule of his property, in which schedule he included the real estate, which he had conveyed on October 14, 1931, to his wife and children, and his son-in-law, aggregating 280.31 acres.

On April 13, 1935, Walter C. Wright, Virgie M. Wright, his wife, John E. Coon and Edna E. Coon, his wife, executed and delivered to the debtor (petitioner) a quit-claim deed for the real estate which he had deeded to them, and to his wife who was then deceased.

On May 27, 1935, a decree of foreclosure was entered in the Adams Circuit Court, Indiana, in favor of the mortgagee (respondent) on its $9,000 mortgage and also a personal judgment against the debtor (respondent). These proceedings covered the 200-acre tract, 120 acres of which had been conveyed by three of four deeds before referred to. Under this decree, the sheriff of Jay County, Indiana, sold this tract to the mortgagee (respondent) for $12,174.31, that being the highest and best bid received, and executed and delivered to it a certificate of sale. Within the year of redemption, prescribed by the Statutes of Indiana, no one redeemed the property. Hence upon delivery to the sheriff of Jay County of the certificate of sale by the mortgagee (respondent), after the expiration of said year, the sheriff did on July 20, 1936 execute and deliver his sheriff's deed to the mortgagee (respondent) for the said 200 acres.

On September 13, 1935, respondent instituted an action in the Circuit Court of Jay County, Indiana, for possession of the 80.31 acres against Walter C. Wright and his wife, Virgie M. Wright. The petitioner, by leave of Court, became a party defendant and pleaded that he had been duly declared a bankrupt in the U. S. District Court for the Northern District of Indiana, Fort Wayne Division, and for that reason the State Court was without jurisdiction. The State Court entered judgment for possession and damages in favor of respondent. An appeal was taken by the petitioner to the Supreme Court of Indiana, and the judgment was affirmed April 2, 1937. *Wright et al.* v. *Union Central Life Insurance Co.*, 7 N. E. (2d) 206. On October 11, 1935, the debtor filed an amended petition in bankruptcy under the provisions of Section 75 (s) as amended August 28, 1935 (U. S. C. A., Sec. 203 (s)).

The period of redemption expired on the 200-acre tract

on July 20, 1936, and on that date, as heretofore set forth, this respondent received the sheriff's final deed. The debtor (petitioner) continued to hold possession and refused to surrender same. Writ of Assistance proceedings were brought by this respondent. The debtor claimed right to possession to this tract for a period of three years, pursuant to the Frazier-Lemke Act (Bankruptcy Act, Sec. 75 (s), as amended by Act of Congress, August 28, 1935, Sec. 6, 11 U. S. C. A., Sec. 203 (s)). Petition for Writ of Assistance was granted and debtor perfected appeal to the Supreme Court of Indiana. That court held that "the claim of the appellants to the benefits of the moratorium provision of the Frazier-Lemke Bankruptcy Act was decided in this Court adverse to their contention in the case of *Wright et al.* v. *Union Central Life Insurance Co.* (Ind. Sup.), 7 N. E. (2d) 206. The question there before the Court and the facts are the same as in the case at bar." The Court further held that "the appellants were not entitled to interpose, as a defense to the writ of assistance, matters which subsequently arose affecting possession of the land. The judgment of foreclosure determined the rights of the parties, and, when the appellants failed to redeem the property, their right of possession was forfeited." *Wright et al.* v. *Union Central Life Insurance Co.*, 10 N. E. (2d) series 726 (October 26, 1937).

The respondent calls attention of this Court to the statement of the petitioner that he has been in continuous possession of the combined tracts, nevertheless said petitioner has made no payments on the mortgage indebtedness, either principal or interest, for a period of more than six years. Nor has the petitioner made any payments on taxes during said period. Moreover no plan has ever been presented to the Conciliation Commis-

sioner to whom the cause was first referred by the U. S. District Court, Northern District of Indiana, Fort Wayne Division.

Reasons For Denying A Writ of Certiorari.

(1) At the time the debtor filed his original bankruptcy petition on October 30, 1934, he had no interest in 200 acres of the 280.31-acre tracts.

(2) At the time the debtor filed his amended petition on October 11, 1935, to avail himself of the benefits of Section 75, as amended under the new Frazier-Lemke Act, August 28, 1935, the period of redemption had expired as to the 80.31-acre tract and the mortgagee (respondent) was in possession of the sheriff's final deed. As to the 200-acre tract the respondent held the sheriff's certificate of sale and under the Indiana law would have been entitled to a final deed for same on July 20, 1936, unless the debtor redeemed same.

(3) There is no conflict between the instant case and this Court's decision in *Wright* v. *Vinton Branch of Mountain Trust Bank of Roanoke,* 300 U. S. 440, 57 S. Ct. 556, 558, 81 L. Ed. .....

ARGUMENT.

I.

Petitioner has failed entirely to inform this Court that at the time he filed his original bankruptcy petition, on October 30, 1934, he had no interest in 200 acres of the 280.31 acres of encumbered property. (R. 6184. fol. 2, 22-33.) Same had previously been conveyed to his wife, children and son-in-law more than three years before. Petitioner did not again receive a deed thereto until six months thereafter. The conveyance of the 80.31 acres of the 280.31-acre tract to the petitioner occurred nine months after the sale by the sheriff of Jay County, Indiana, to the respondent. The conveyance of the 200 acres of said tracts to the petitioner occurred almost immediately before the sale under the foreclosure decree.

It is fundamental that no one can have the benefit of Section 75 unless he is the owner of a farm. We take it that no authorities need be cited to support this position.

II.

On October 11, 1935 the debtor filed his amended petition to avail himself of the benefits of Section 75, as amended under the so-called New Frazier-Lemke Act of August 28, 1935. The period of redemption had already expired as to the 80.31-acre tract (August 2, 1935), and this respondent was in possession of the sheriff's final deed. On the 200-acre tract the respondent held the sheriff's certificate of sale and under the Indiana law

would have been entitled to a final deed for same on July 20, 1936, unless there was a redemption by the petitioner.

The petitioner contends that by the filing of his amended petition on October 11, 1935, that Section 75, as amended under the Act of August 28, 1935, operated, *first,* to extend the time for redemption of the 200-acre tract and *second,* to void the final deed for the 80.31-acre tract, and to extend the time for redemption of it. (Point (m), p. 20, Petitioner's Motion for Writ of Certiorari.)

The petitioner has stated with considerable emphasis in support of his motion and petition for writ of certiorari that the case of *Lafayette Life Insurance Company* v. *Lowmon,* 79 F. (2d) 887, decided by the U. S. Circuit Court of Appeals for the Seventh Circuit, was overruled by this Court in *Wright* v. *Vinton Branch of Mountain Trust Bank of Roanoke,* 300 U. S. 400, 57 S. Ct. 556, and sustained Sub-section (s) of Section 75 as to all of its provisions. This Court, after presenting the question for decision, as to the constitutionality of Section 75, Subsection (s) as amended, said:

> "In this case, the Federal Court for Western Virginia (see *In re Sherman* [D. C.], 12 F. Supp. 297, and the Circuit Court of Appeals for the Fourth Circuit (85 F. (2d) 973) held it invalid. Like decisions have been rendered in other circuits. *Lafayette Life Insurance Co.* v. *Lowmon,* 79 F. (2d) 887 (Seventh Circuit); *United States National Bank of Omaha* v. *Pamp,* 83 F. (2d) 493 (Eighth Circuit). In the Fifth Circuit the legislation was sustained. *Dallas Joint Stock Land Bank* v. *Davis* (C. C. A.), 83 F. (2d) 322. Because of this conflict and the importance of the question, we granted certiorari." 299 U. S. 537, 57 S. Ct. 312, 81 L. Ed. .....

These cases are not referred to in any other part of this Court's opinion.

Thus it can be said that these cases served only as

the basis for granting certiorari. The questions presented in the *Lowmon* case and in *U. S. National Bank of Omaha* v. *Pamp,* 83 F. (2d) 493, also (85 F. (2d) 973), Circuit Court of Appeals for the Fourth Circuit were not the same, nor were the facts similar in those cases and the *Wright* case decided by this Court. In what manner the *Lowmon* case, 79 F. (2d) 887, and the instant case differ from *Wright* v. *Vinton Branch of Mountain Trust Bank of Roanoke,* 300 U. S. 440, 57 S. Ct. 556, 558, 81 L. Ed. ...., which case petitioner relies entirely upon, we shall discuss under the next heading.

III.

The petitioner contends that the decisions of the U. S. Circuit Court of Appeals for the Seventh Circuit in the instant case, 91 F. (2d) 894, and the so-called *Lowmon* case, 79 F. (2d) 887, are contrary to and in conflict with the decision of this Court in *Wright* v. *Vinton Branch of Mountain Trust Bank of Roanoke,* 300 U. S. 440, 57 S. Ct. 556. No examination of the facts and issues of these cases are presented by petitioner. The respondent submits that there is no conflict.

The question in the *Lowmon* case was not before this Court in the *Wright* case. In the *Wright* case there had been no sale and the period of redemption had not begun. In the *Lowmon* and in the instant case, as to that tract on which the period of redemption had not yet expired, a sale had been had, and the period of redemption was running. The *Lowmon* case did not consider the question of the right of the Congress under its bankruptcy powers to defer or stay the foreclosure of a mortgage, or to defer a sale after a foreclosure. In the *Lowmon* case as in the instant case a sale had been had and certificates delivered

to the respective purchasers. The right of the Bankruptcy Court to administer upon the right of redemption was not questioned by the Court in the *Lowmon* case nor in the instant case. The Court did hold "that Congress had no power to bestow upon the Bankruptcy Court such right, to enlarge the debtor's estate, which had been limited by the foreclosure and sale in compliance with the laws of Indiana."

In the *Wright* case, decided by this Court, the primary question presented was the power of the Congress to formulate remedies for the protection of title to property against foreclosure or sale, while that title was yet in the debtor. In the *Pamp* case cited by petitioner, *United States National Bank of Omaha* v. *Pamp,* 83 F. (2d) 493, there had been a sale, but it had not been confirmed, as was required under the laws of Nebraska. In the *Lowmon* and instant case, no confirmation by the Court of a sheriff's sale was required under Indiana laws. Furthermore in the *Lowmon* case and the instant case the Court was not considering the right of the Congress to enact legislation against foreclosure and sale, but with substantive property rights which arose when sales were had and certificates of sale executed and delivered in accordance with the Indiana Statutes. As was said by the Court in the instant case, "The notes and mortgage were not in existence; they were merged into the decree of foreclosure and were cancelled."

In *Board of Trade of City of Chicago* v. *Johnson,* 264 U. S. 1, 44 S. Ct. 232, 234, 68 L. Ed. 533, this Court said:

> "* * * Where the bankrupt law deals with property rights which are regulated by the state law, the federal courts in bankruptcy will follow the state courts."

In *Home Building & Loan Ass'n* v. *Blaisdell*, 290 U. S. 398, 54 S. Ct. 231, 243, 78 L. Ed. 413, 88 A. L. R. 1481, this Court stated:

> "Although the Courts would have no authority to alter a statutory period of redemption, the [Minnesota] legislation in question permits the courts to extend that period, within limits and upon equitable terms."

We do not believe that these principles were overruled or intended to be overruled by this Court in the *Wright* case.

The petitioner contends that this Court intended in the *Wright* case to uphold each and every provision of Subsection (s). In answer to this contention, we quote the U. S. Circuit Court of Appeals in the instant case when it says:

> "We think it upholds only those portions which were pertinent to the questions raised in that case, which did not include the right of the bankruptcy court to extend the time for redemption after that period had begun to run."

CONCLUSION.

We respectfully submit that there is no basis for the issuance of certiorari in the instant case. The *Lowmon* case and the case at bar are not in conflict with the decision of this Court in the *Wright* case, despite petitioner's earnest endeavor to confuse the issues.

Respondent urges that the decision of the U. S. Circuit Court of Appeals for the Seventh Circuit is manifestly correct and should not be disturbed.

The petition for certiorari should be denied.

Respectfully submitted,

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